

MICHAEL W. MOYER

Page 226

1 had worked in my treasury department. She
 2 moved to their treasury department, and I
 3 think -- I'm guessing at what her concerns --
 4 Angela was concerned, but Angela is the type of
 5 person that will never discuss business with
 6 someone who does not have the need and the
 7 right to know. I no longer had the need nor
 8 the right to know. She knew that if I did, I'd
 9 go to her boss to get it. So, she's -- I mean,
 10 she doesn't even discuss with her husband, you
 11 know, the things that occur in work, nor does
 12 he. He happens to be the provost at the
 13 University of Pittsburgh. He doesn't discuss
 14 with her those things. They're just an
 15 extremely moral, down-to-earth couple, and so
 16 she would never tell me what her concerns were,
 17 but I had known her for ten years. I knew she
 18 was concerned, okay, and, in general, it didn't
 19 take a genius to know that she works with cash
 20 and she's concerned with cash and what was
 21 happening with that cash.

22 Q. And you connected the dots from there?

23 A. Of course. It does not take a genius to do
 24 that.

25 MR. KRUSKO: That's all I have,

Page 228

1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE
 2 COUNTY OF ALLEGHENY) SS:

3 I, JoAnn M. Brown, RMR, a Court Reporter and
 4 Notary Public in and for the Commonwealth of
 5 Pennsylvania, do hereby certify that the witness,
 6 MICHAEL W. MOYER, was by me first duly sworn to
 7 testify to the truth; that the foregoing deposition
 8 was taken at the time and place stated herein; and
 9 that the said deposition was recorded
 10 stenographically by me and then reduced to printing
 11 under my direction, and constitutes a true record of
 12 the testimony given by said witness.

13 I further certify that the inspection, reading
 14 and signing of said deposition were NOT waived by
 15 counsel for the respective parties and by the
 16 witness.

17 I further certify that I am not a relative or
 18 employee of any of the parties, or a relative or
 19 employee of either counsel, and that I am in no way
 20 interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
 22 and affixed my seal of office this 19th day of
 23 November, 2002.

24 _____
 25 Notary Public

Page 227

1 Mr. Moyer. Thank you.

2 MR. TAMBURRI: I have no further
 3 questions either.

4 THE VIDEOGRAPHER: With there being
 5 no further questions, the deposition is
 6 concluded at 3:54 p.m.

7 ----
 8 (The proceedings were concluded at 3:54 p.m.)
 9 ----

Page 229

1 COMMONWEALTH OF PENNSYLVANIA) ERRATA
 2 COUNTY OF ALLEGHENY) SHEET

3 I, MICHAEL W. MOYER, have read the foregoing
 4 pages of my deposition given on Friday, November 15,
 5 2002, and wish to make the following, if any,
 6 amendments, additions, deletions or corrections:

7 Page/Line Should Read Reason for Change
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 19

20 In all other respects, the transcript is true and
 21 correct.

22 _____
 23 MICHAEL W. MOYER

24 Subscribed and sworn to before me this
 25 _____ day of _____, 2002.

 Notary Public
 AKF Reference No. JB72890

58 (Pages 226 to 229)

Murasko Dep.

In The Matter Of:

***AHERF v.
PRICEWATERHOUSECOOPERS***

DR. DONNA MARIE MURASKO
April 8, 2004

LEGALINK MANHATTAN
420 Lexington Avenue - Suite 2108
New York, NY 10170
PH: 212-557-7400 / FAX: 212-692-9171

MURASKO, DR. DONNA MARIE



Page 162

1 Dr. Donna M. Murasko
 2 payment delay.
 3 That was a recurrent theme through
 4 Board meetings, on whether or not we were
 5 getting that money in quickly enough. 03:00PM
 6 So this is consistent with that.
 7 Q. Do you know why Len and Sherif said
 8 that, "we were fine"?
 9 A. Probably that the individuals are
 10 now doing fine. Previous Board book said -- 03:01PM
 11 you have actually given me today said that
 12 there are concerns with that. So their
 13 comments were probably saying that that has
 14 been addressed.
 15 Q. If you go to the next page, Delaware 03:01PM
 16 Valley Obligated Group, Combining Statement of
 17 Changes in Net Assets For the Year Ending June
 18 30, 1997.
 19 It says, "Bob Palmer," colon,
 20 "realize conditions were difficult but did we 03:01PM
 21 do the best we could. Sherif, I believe so.
 22 Recruitment last year was needed, but we're
 23 paying for it. Len, we've made some faculty
 24 adjustments but," dot, dot, dot, takes --
 25 sorry, "take one year to see change at 03:01PM

Page 163

1 Dr. Donna M. Murasko
 2 minimum."
 3 Do you know what that was about?
 4 A. It's consistent with what I just
 5 said. 03:01PM
 6 If you hire new physicians, it takes
 7 a year in order for their revenue to be
 8 totally represented in the financials because
 9 of the billing and the time that those
 10 receivables come in. 03:02PM
 11 Q. Well, what do you think, "we're
 12 paying for it," means?
 13 A. When you hire faculty, even though
 14 you're not getting their revenue in, you have
 15 to give them their monthly salary. 03:02PM
 16 Q. And then it says, "Potamkin," colon,
 17 PR is management poor. Are losses real. Need
 18 to know correct spin."
 19 Do you know what that's all about?
 20 MR. UNICE: Object to form. 03:02PM
 21 A. I don't know. I can't go back and
 22 interpret that.
 23 Q. But this would be something that Mr.
 24 Potamkin said?
 25 A. Not directly; it is obviously a 03:03PM

Page 164

1 Dr. Donna M. Murasko
 2 paraphrase and a summary on my part. But I
 3 can't decipher it at this point.
 4 MR. FRIESEN: We need to change
 5 the tape briefly. 03:03PM
 6 VIDEO SPECIALIST: We are now
 7 going off the video record. That
 8 concludes Videotape No. 2. The time,
 9 3:03.
 10 (Short recess.) 03:03PM
 11 VIDEO SPECIALIST: We are now
 12 back on the videotape record. This
 13 commences Videotape No. 3. The date,
 14 April 8, 2004. The time, 3:13.
 15 You may continue. 03:13PM
 16 BY MR. FRIESEN:
 17 Q. Do you recall that Mr. Abdelhak was
 18 terminated in June of 1998?
 19 A. Yes, I do.
 20 Q. And when was the first time that you 03:13PM
 21 ever heard any discussion whatsoever about his
 22 potential termination?
 23 A. I cannot recall the date. I...
 24 Q. Do you recall how much before the
 25 actual termination it was? 03:14PM

Page 165

1 Dr. Donna M. Murasko
 2 A. No.
 3 Q. Whether it was a day or a week?
 4 A. I cannot.
 5 Q. Were you involved at all in the 03:14PM
 6 decision to terminate him?
 7 A. I was not.
 8 Q. Do you recall how you learned that
 9 he was terminated?
 10 A. I do not. 03:14PM
 11 Q. Did you -- strike that.
 12 Do you know when the first time was
 13 that you heard that anyone had lost confidence
 14 in Mr. Abdelhak?
 15 A. No. 03:14PM
 16 MR. UNICE: Object to form.
 17 BY MR. FRIESEN:
 18 Q. Were you aware that, prior to his
 19 termination, a group of AHERF doctors had lost
 20 confidence in him? 03:14PM
 21 A. I do not know that. I do not
 22 remember learning that.
 23 Q. And did you ever lose confidence in
 24 Mr. Abdelhak prior to his termination?
 25 A. Confidence, no; concern, yes. 03:15PM

Page 166

1 Dr. Donna M. Murasko
 2 Q. And, again, do you know when that
 3 concern started, whether it's in time or
 4 related to particular events?
 5 A. I can't pinpoint it to anything 03:15PM
 6 specific.
 7 Q. And what was your concern?
 8 A. Things were moving too quickly.
 9 Q. In a negative trajectory?
 10 A. No. 03:15PM
 11 Q. No?
 12 A. The growth that was occurring in the
 13 system was too quick. I am a fiscal
 14 conservative.
 15 Q. And you don't know whether this was 03:16PM
 16 in '96 or seven or eight?
 17 A. I can't put it in a time frame.
 18 Q. How about Mr. McConnell; do you
 19 remember ever losing confidence in Mr.
 20 McConnell prior to his termination? 03:16PM
 21 MR. UNICE: Object to form.
 22 A. I can't remember formulating an
 23 opinion at that time.
 24 Q. Do you know why Mr. Abdelhak was
 25 terminated? 03:16PM

Page 167

1 Dr. Donna M. Murasko
 2 A. I do not.
 3 Q. Prior to the time that you became
 4 concerned about Mr. Abdelhak, what was your
 5 general impression of him? 03:17PM
 6 A. He was a man who had a defined
 7 direction and had the energy to go in that
 8 direction.
 9 Q. Did you consider him someone who was
 10 open to other people's ideas? 03:17PM
 11 A. Anyone at the top has very defined
 12 opinions. I personally found him more willing
 13 to listen than many people at the top.
 14 Q. Just to be clear, than you had
 15 thought of many people at the top or that than 03:17PM
 16 other people at the top had thought of him? I
 17 am just trying --
 18 MR. KOLANKSY: I --
 19 A. I don't understand your question.
 20 Q. Well, you said you found him more 03:17PM
 21 willing to listen than other people at the
 22 top. And I just don't know if you meant other
 23 people at the top thought differently or he
 24 was different than other people at the top.
 25 A. Oh, probably neither. 03:18PM

Page 168

1 Dr. Donna M. Murasko
 2 Q. Okay.
 3 A. It's people in a position of his
 4 authority generally do not -- are not willing
 5 to listen to people in the middle at all. I 03:18PM
 6 found him one who would listen. So not just
 7 in Allegheny, but generally people in power.
 8 Q. Now, by "in the middle," what do you
 9 refer to?
 10 A. A department head. 03:18PM
 11 Q. Because you are a Trustee, as well,
 12 that's can what I am trying to get at.
 13 A. Key --
 14 Q. In your role as a Trustee, did you
 15 consider him someone who was willing to listen 03:18PM
 16 to Trustees?
 17 A. My -- you asked for my opinion in
 18 general, and I have to do it based on my
 19 personal interaction with him.
 20 And, as I said before, it was a -- 03:18PM
 21 it was not just a Trustee; I was a faculty
 22 member and a department head. So I cannot
 23 tell you whether or not my interaction with
 24 him is universal with everybody.
 25 I can tell you specifically how he 03:19PM

Page 169

1 Dr. Donna M. Murasko
 2 interacted with me, where he was willing to
 3 listen to alternate points of view.
 4 Q. Well, when you were at these Board
 5 meetings with other Trustees, and when you 03:19PM
 6 wrote notes about this Trustee saying this and
 7 that one shaking his head, et cetera, et
 8 cetera, did you have a sense at those meetings
 9 that Mr. Abdelhak was open to the suggestions
 10 of other Trustees? 03:19PM
 11 A. Yes. He was listening to people and
 12 seemed receptive.
 13 MR. FRIESEN: Let me mark
 14 Exhibit 2528.
 15 (Document marked for
 16 identification as Exhibit 2528.)
 17 MR. FRIESEN: This is a
 18 documents Bates numbered PR-PLD-066-00492
 19 through 497. And it says, "1995
 20 Trustee's Evaluation." It says, 03:20PM
 21 "Murasko," at the top. Then there is
 22 some handwriting throughout and X's.
 23 BY MR. FRIESEN:
 24 Q. Is this your handwriting in the
 25 responses to this? 03:20PM

Page 174

1 Dr. Donna M. Murasko
 2 Q. But in terms of your employment,
 3 your employment for the system was a full-time
 4 job?
 5 A. Yes, it was. 03:29PM
 6 Q. And your time as Trustee was
 7 something that you did above and beyond your
 8 duties as an employee for the AHERF system?
 9 A. Yes, it was.
 10 Q. Now, in the discharge of your duties 03:30PM
 11 as a Trustee, were you assisted in any way by
 12 outside professionals that management would
 13 hire from time to time?
 14 A. What do you mean by "assistance from
 15 professionals"? 03:30PM
 16 Q. For example, would management from
 17 time to time hire consultants to come in and
 18 help management and the Board learn about
 19 different issues facing the healthcare system?
 20 A. Occasionally. 03:30PM
 21 Q. And would the managers on a yearly
 22 basis allow external auditors to help them
 23 prepare and issue financial statements in an
 24 audited format?
 25 A. Yes. 03:30PM

Page 175

1 Dr. Donna M. Murasko
 2 MR. FRIESEN: Objection.
 3 A. (Continued.) Yes, there were
 4 outside financial auditors.
 5 Q. Can you recall any other type of 03:30PM
 6 outside advisors, besides consultants and
 7 auditors, that you were aware of, being
 8 retained by AHERF management?
 9 A. I can't recall any.
 10 Q. Now, let's talk for a moment about 03:30PM
 11 the manner in which you as a Trustee utilized
 12 or relied upon the services of these outside
 13 professionals.
 14 What was your understanding of the
 15 role of AHERF's outside auditing firm, Coopers 03:31PM
 16 & Lybrand, during the time you served as a
 17 Trustee?
 18 A. My understanding was that Coopers &
 19 Lybrand would make sure that there were no
 20 abnormalities in the financial reporting for 03:31PM
 21 the institution. And I relied on that audit.
 22 Q. Can you give me anymore details --
 23 knowing that you nor I aren't financial
 24 people -- what abnormalities you are speaking
 25 of? 03:31PM

Page 176

1 Dr. Donna M. Murasko
 2 A. I cannot read these financials as
 3 thoroughly as a financial person.
 4 I was relying on external auditors
 5 to look through the financials to make sure 03:31PM
 6 there was no inconsistencies, inappropriate
 7 activity. Because I wasn't looking at the
 8 daily logs and I wouldn't be able to recognize
 9 such things because I'm not a trained eye.
 10 Q. Why would it be important for you, 03:32PM
 11 as an external Trustee -- I am sorry, as a
 12 Trustee, without a trained eye towards
 13 financials, to have external auditors do this
 14 check?
 15 A. In my field, as well as the medical 03:32PM
 16 profession, we rely on consultants to give us
 17 advice in areas where we are lacking
 18 expertise. It is from this perspective that I
 19 relied on the auditors to give me that
 20 information. 03:32PM
 21 Q. As an AHERF Trustee, why did you
 22 hold it important to have accurate financial
 23 statements?
 24 A. We couldn't survive if we weren't
 25 financially sound and doing things 03:32PM

Page 177

1 Dr. Donna M. Murasko
 2 appropriately financially.
 3 Q. So it is fair to say that you relied
 4 upon the audited financial statements as a
 5 check on the internal financial statements 03:32PM
 6 that were presented for audit?
 7 A. That is correct.
 8 MR. FRIESEN: Objection.
 9 BY MR. UNICE:
 10 Q. And you relied on the audited 03:33PM
 11 financial statements as a check on whether or
 12 not the financials presented for audit were
 13 presented with integrity?
 14 A. That is correct.
 15 Q. And you understood the role of the 03:33PM
 16 external auditor to disclose to AHERF if
 17 during the course of the audit they had
 18 uncovered issues that raised integrity
 19 questions with them?
 20 A. Yes. 03:33PM
 21 Q. Now, as your role as an AHERF
 22 Trustee, to whom, to your understanding, would
 23 the auditors have had to disclose issues of
 24 integrity if such issues had arisen?
 25 A. I understood that it would be 03:33PM

Page 178

1 Dr. Donna M. Murasko
 2 included in the reports that we got, if there
 3 were any inconsistencies.
 4 Q. And the reports you are speaking of
 5 are the audited report? 03:33PM
 6 A. The statement. As I said, the
 7 letter, and then the summary of any problems
 8 that may have arisen.
 9 Q. And they were presented to the Board
 10 on an annual basis; correct? 03:34PM
 11 A. Yes, they were.
 12 Q. Who presented the annual audited
 13 financial statements for approval to the
 14 Board?
 15 A. I believe it was Dave McConnell, but 03:34PM
 16 I can't remember. I can't remember who
 17 presented it to us.
 18 No; it was the Chairman of the Audit
 19 Committee of the Board. Yes, that's who did
 20 it. 03:34PM
 21 Q. Does the name David Barnes ring any
 22 bells?
 23 A. Yes; I believe he was Chairman of
 24 the committee.
 25 Q. Let's focus for a minute on a 03:34PM

Page 179

1 Dr. Donna M. Murasko
 2 certain time frame.
 3 To your recollection, was Mr. Barnes
 4 the Chair of AHERF's Audit Committee during
 5 Fiscal Years '96 and '97? 03:34PM
 6 A. Years are a problem to me.
 7 I know that Mr. Barnes was the head
 8 of the committee for a number of years. I
 9 cannot specifically tell you what years.
 10 Q. So as you understood the process of 03:34PM
 11 an audit, the Audit Committee would be the
 12 primary committee at AHERF working with the
 13 external auditing firm in terms of any
 14 communication issues the auditors had to make
 15 towards the firm -- towards AHERF? 03:35PM
 16 A. That was my understanding.
 17 Q. And once the audit report was
 18 completed, it went to the Audit Committee
 19 first for approval?
 20 A. That was my understanding. 03:35PM
 21 Q. And then it was your understanding
 22 that, after approval by the Audit Committee,
 23 the Chair of that committee would bring his
 24 recommendation to the full Board for its
 25 approval? 03:35PM

Page 180

1 Dr. Donna M. Murasko
 2 A. Correct.
 3 Q. Do you ever recall not approving
 4 financial statements presented for audit
 5 during a Board meeting? 03:35PM
 6 A. No, I do not remember -- recall that
 7 at all.
 8 Q. Do you have any recollection of any
 9 issues with respect to the integrity of
 10 AHERF's financial statements being raised by 03:35PM
 11 the Audit Committee Chair at a Board meeting?
 12 A. No, I do not recall that.
 13 Q. Can you recall any other functions
 14 of the Audit Committee, aside from presenting
 15 the yearly financial statements for approval? 03:36PM
 16 A. No, I can't.
 17 Q. Can you recall whether or not on a
 18 yearly basis the Audit Committee Chair would
 19 come to the Board with a recommendation of
 20 which external auditors to hire for the next 03:36PM
 21 year?
 22 A. I remember a discussion of who to
 23 hire. I can't remember if it was an annual
 24 discussion or not.
 25 Q. And that discussion was raised by 03:36PM

Page 181

1 Dr. Donna M. Murasko
 2 the Audit Committee Chair?
 3 A. Yes, it was.
 4 Q. Do you recall the Audit Committee
 5 Chair coming to the Board for its approval of 03:36PM
 6 the yearly audit plan presented from Coopers &
 7 Lybrand?
 8 MR. FRIESEN: Objection. Vague
 9 as to time.
 10 A. I cannot remember specifically going 03:36PM
 11 through a plan.
 12 Q. I am going to show you a document
 13 that I only have one copy of. It has already
 14 been marked as an exhibit in this case.
 15 My purpose in showing it to you and 03:37PM
 16 your counsel and Jeff is just to refresh your
 17 memory of whether or not audit plans presented
 18 at Board meetings for approval.
 19 This document is Exhibit 2056. And
 20 it purports to be minutes of a 6/21/96 AHERF 03:37PM
 21 Board meeting. You were listed as being a
 22 member present. And the document is Bates
 23 labeled GOV 53197-53203.
 24 Take a moment to just peruse this,
 25 and then turn to Page 53200. 03:38PM

Page 182

1 Dr. Donna M. Murasko
 2 A. I don't remember what the plans
 3 would have looked like.
 4 Q. I understand that. But my only
 5 point in showing you this document is, does it 03:38PM
 6 refresh your memory that part of the audit
 7 process involved the Audit Committee Chair
 8 coming to the Board and presenting to the
 9 Board for its approval the fiscal year audit
 10 plan? 03:38PM
 11 A. It is in the report, but I still
 12 don't have independent recollection of that.
 13 Q. Understood.
 14 Any reason to doubt the accuracy of
 15 the minutes you just reviewed? 03:39PM
 16 A. No.
 17 MR. UNICE: Jeff, do you want
 18 to see it?
 19 BY MR. UNICE:
 20 Q. Do you have an understanding of what 03:39PM
 21 the term "clean opinion" means in the context
 22 of a financial statement?
 23 A. No, I do not.
 24 Q. Did you ever attend an Audit
 25 Committee meeting at AHERF? 03:39PM

Page 183

1 Dr. Donna M. Murasko
 2 A. No, I did not.
 3 Q. Do you recall ever a representative
 4 of Coopers & Lybrand ever attending an AHERF
 5 Board meeting? 03:39PM
 6 A. I don't remember.
 7 Q. So, to your recollection, you didn't
 8 have any personal interaction with AHERF's
 9 external auditors; is that right?
 10 A. I did not. 03:39PM
 11 Q. So you relied upon presentations
 12 from the Audit Committee to get an
 13 understanding of how the audit was
 14 progressing, as well as the results of the
 15 audited report? 03:39PM
 16 A. Yes, I did.
 17 Q. Now, as you understood the role of
 18 the Audit Committee, was one of the functions
 19 of that committee to address any concerns
 20 raised by the independent auditors during the 03:40PM
 21 course of the audit with respect to the
 22 information that financial management had
 23 given Coopers to audit?
 24 A. My understanding was that they were
 25 the interface between the two, yes. 03:40PM

Page 184

1 Dr. Donna M. Murasko
 2 Q. And you expected the auditors to
 3 raise with the Audit Committee, then, any
 4 material misstatements that they would have
 5 uncovered, if they would have uncovered any 03:40PM
 6 material misstatements in the financials
 7 presented by management for audit?
 8 MR. FRIESEN: Objection.
 9 A. I was absolutely dependent on the
 10 external Audit Committee letting us know if 03:40PM
 11 there was something wrong.
 12 Q. And then you would also expect the
 13 auditors to report to the Audit Committee if
 14 the auditors had uncovered intentional
 15 misstatements in the financials presented by 03:41PM
 16 management for audit?
 17 A. I was absolutely sure that, if there
 18 was something wrong, external auditors would
 19 tell us.
 20 Q. And the "us" in your sentence is 03:41PM
 21 whom?
 22 A. That they would tell the Audit
 23 Committee, and then the Audit Committee would
 24 tell the full Board.
 25 Q. And you would also expect the 03:41PM

Page 185

1 Dr. Donna M. Murasko
 2 external auditors, if they have uncovered what
 3 they deemed to be fraud in the financial
 4 statements presented for audit by management,
 5 that that be disclosed to the Audit Committee, 03:41PM
 6 as well?
 7 A. Yes.
 8 MR. FRIESEN: Objection.
 9 You are just going to have to
 10 let me get in my objection. 03:41PM
 11 THE WITNESS: I'm sorry.
 12 MR. FRIESEN: Objection.
 13 THE WITNESS: Sorry.
 14 A. (Continued.) Yes.
 15 Q. Are you aware of whether Coopers & 03:41PM
 16 Lybrand ever raised those types of concerns
 17 with the Audit Committee during your time as
 18 an AHERF Trustee?
 19 A. To my knowledge, no concerns were
 20 raised. 03:41PM
 21 Q. Now, if the auditors had come to the
 22 Audit Committee with a concern with respect to
 23 the information presented for audit, was it
 24 your understanding that the role of the Audit
 25 Committee would have been to investigate that 03:42PM

Page 186

1 Dr. Donna M. Murasko
 2 matter?
 3 MR. FRIESEN: Objection.
 4 A. That is my understanding, that the
 5 Audit Committee would have investigated it. 03:42PM
 6 Q. And you would rely on the Audit
 7 Committee's investigation in terms of arriving
 8 at a resolution of whatever matters the
 9 auditors brought to their attention?
 10 MR. FRIESEN: Objection. 03:42PM
 11 A. That would be my assumption and
 12 expectation.
 13 Q. Now, if the Audit Committee had,
 14 upon disclosure of concerns by Coopers &
 15 Lybrand, conducted such an investigation, and 03:42PM
 16 then come forward to the Board with a
 17 recommendation on how to resolve the issue,
 18 what options would have been available to you
 19 as a Board member?
 20 MR. FRIESEN: Objection. Calls 03:43PM
 21 for speculation.
 22 A. I would not know. There was no
 23 instance where this occurred.
 24 My only assumption is, if there was
 25 a problem, we would need to resolve it. And 03:43PM

Page 187

1 Dr. Donna M. Murasko
 2 that would be essential, that the Board follow
 3 through to make sure whatever problem it was
 4 was resolved.
 5 But that's just speculation, because 03:43PM
 6 we never had an instance.
 7 MR. KOLANKSY: Don't speculate
 8 anymore.
 9 THE WITNESS: Okay. Yes, sir.
 10 BY MR. UNICE:
 11 Q. Now, the AHERF Board, let's talk
 12 about it generally for a moment now, the Board
 13 itself.
 14 Can you recall how many members
 15 there were of the AHERF Board in Fiscal Years 03:43PM
 16 1996 and '97?
 17 A. I would have to go to the list and
 18 count.
 19 Q. Well, this isn't a memory test, but
 20 I am just trying to get a general sense here. 03:43PM
 21 Take a look at Exhibit 1655, for
 22 example. It is the 10/30/97 minutes.
 23 A. Okay.
 24 Q. And there is roughly between 30 and
 25 40 Board members listed? 03:44PM

Page 188

1 Dr. Donna M. Murasko
 2 A. That looks about right.
 3 Q. Roughly. Okay.
 4 Now, in the context of a Board of
 5 this size, do you recall in 1996 or 1997 03:44PM
 6 whether there were certain Trustees that were
 7 more active than others during a normal Board
 8 discussion?
 9 MR. FRIESEN: Objection. I
 10 think I asked that already. But, go 03:44PM
 11 ahead.
 12 A. In different meetings, different
 13 people spoke, yes.
 14 MR. UNICE: And I think on
 15 cross-examination we are allowed to get 03:44PM
 16 into issues that were raised on direct,
 17 and that's all I am doing.
 18 BY MR. UNICE:
 19 Q. Can you recall for me any of the
 20 individuals who you thought were more active 03:44PM
 21 than other members of the Board?
 22 A. Mr. Barnes, Mr. Edelman. And the
 23 AHERF Board, they were the two that stand out
 24 in my mind.
 25 Q. Does the name Ira Gumberg ring any 03:45PM

Page 189

1 Dr. Donna M. Murasko
 2 bells to you?
 3 A. Yes. He did sometimes.
 4 Q. Did what?
 5 A. He spoke out sometimes. 03:45PM
 6 Q. In your experience on the AHERF
 7 Board, did you find that on occasion Mr.
 8 Edelman and Mr. Barnes would probe management
 9 and ask questions regarding the presentations
 10 management put forth? 03:45PM
 11 A. Yes.
 12 Q. Would the same go for Mr. Gumberg,
 13 as well?
 14 A. Yes.
 15 Q. Likewise, on the committees on which 03:45PM
 16 you sat, can you recall any individuals that
 17 stand out as committee leaders, so to speak?
 18 A. I sat on no AHERF committees.
 19 Q. How about on subsidiary Boards; for
 20 example, the AUHS? 03:45PM
 21 A. What is the question?
 22 Q. Can you recall any individuals that
 23 stand out in your mind as leaders of that
 24 committee or subsidiary Board?
 25 A. Yes. 03:46PM

Page 190

1 Dr. Donna M. Murasko

2 Q. Who were they for me?

3 A. Mr. Palmer, Mr. Neuwirth, Mr. Cook,

4 and Dorothy Brown.

5 Q. And which entity are we discussing? 03:46PM

6 A. AUHS.

7 Q. The Board itself?

8 A. Uh-huh.

9 Q. And, likewise, you found that from

10 time to time those individuals would challenge 03:46PM

11 management with their presentations that

12 management brought for the Board's approval?

13 A. Yes.

14 Q. Did you have any sense while you

15 were an AHERF Trustee of any leaders on the 03:46PM

16 Audit Committee?

17 A. The only person that comes to mind

18 is Mr. Barnes.

19 Q. And what makes you form that

20 impression? 03:46PM

21 A. He was the one who made the

22 presentations and asked many of the questions

23 regarding financials in general. You know,

24 the Audit Committee itself, he made the

25 presentations. 03:47PM

Page 191

1 Dr. Donna M. Murasko

2 Q. At the AHERF Board meetings?

3 A. Yes.

4 Q. I believe Mr. Friesen asked you if

5 at some point you began to lose confidence in 03:47PM

6 either Mr. Abdelhak or Mr. McConnell.

7 Do you remember discussing that?

8 A. Yes.

9 Q. At any point during your tenure on

10 the AHERF Board did you have any concerns with 03:47PM

11 the integrity of either Mr. Abdelhak or Mr.

12 McConnell in leading the AHERF system?

13 A. I don't remember any specific

14 instance where I questioned their integrity.

15 Q. Do you recall whether any other 03:47PM

16 Board members expressed to you their concerns

17 with respect to the integrity of either Mr.

18 Abdelhak or Mr. McConnell?

19 A. I don't have any recollection of

20 such discussion. 03:48PM

21 Q. Did you ever hear at a Board meeting

22 any Audit Committee member who was present at

23 that meeting question the integrity of either

24 Mr. Abdelhak or Mr. McConnell?

25 A. I don't remember anything like that. 03:48PM

Page 192

1 Dr. Donna M. Murasko

2 Q. Now, from time to time as a Board

3 member you would receive internal financial

4 statements with those large Board packets that

5 were sent to you before the meeting; correct? 03:48PM

6 A. Yes.

7 Q. Were those typically sent quarterly?

8 A. Right before every Board meeting.

9 So, yes, I guess quarterly.

10 Q. And then once a year you would be 03:49PM

11 presented with the audited financial

12 statements for that whole fiscal year;

13 correct?

14 A. Yes.

15 Q. At any time do you ever recall 03:49PM

16 discussing at a Board meeting any

17 inconsistencies between the audited financial

18 statements and the financial statements you

19 were provided on a quarterly basis?

20 A. I don't remember that discussion. 03:49PM

21 Q. Generally as a Board member, can you

22 describe to me how you would use the internal

23 quarterly financial statements to assess the

24 system's direction?

25 A. I would read them. I would pull out 03:49PM

Page 193

1 Dr. Donna M. Murasko

2 what I had for the last quarter. I would

3 compare them to see how we were going, just to

4 see if we're on target.

5 But I pulled out the previous Board 03:49PM

6 book to compare with the current one.

7 Q. Explain to me, if it is different at

8 all, what you would do with the audited

9 financial statements to help you as a Board

10 member gauge how the system was performing? 03:50PM

11 A. I would take the most recent --

12 whatever report was closest to that audit

13 report, and pull it out to see if they looked

14 about the same.

15 Q. Do you ever recall at an AHERF Board 03:50PM

16 meeting not approving the audited financial

17 statements that the Audit Committee Chair

18 presented for approval?

19 A. I do not remember such an action.

20 Q. Were you aware that in the fall of 03:50PM

21 1998, after AHERF had filed for bankruptcy, a

22 press release was issued stating that the

23 Fiscal Year 1997 financial statements should

24 no longer be relied upon?

25 A. I would not be able to tell you that 03:51PM

Page 194

1 Dr. Donna M. Murasko
2 was 1997.
3 But I do remember a release saying
4 that there was one year that we couldn't rely
5 on the financials. I wouldn't have been able 03:51PM
6 to tell you now that it was '97. It was a
7 year, though.
8 Q. How did you learn about that
9 release?
10 A. I don't remember. 03:51PM
11 Q. Can you recall what reaction you had
12 upon learning about it?
13 A. Yes.
14 Q. Explain that to me.
15 A. My reaction was, I thought they were 03:51PM
16 audited, how can there be something wrong.
17 That was my gut reaction.
18 Q. So you were surprised that there was
19 a need to restate the financial statements
20 because they had been audited by an 03:51PM
21 independent firm that you relied upon;
22 correct?
23 A. Absolutely.
24 Q. So it is fair to say you were
25 surprised upon learning of the press release? 03:52PM

Page 195

1 Dr. Donna M. Murasko
2 A. That's a very fair description.
3 Q. Did you discuss your reaction to the
4 press release with any other Board members?
5 A. Not to my recollection. 03:52PM
6 Q. Do you recall discussing the press
7 release with any AHERF managers?
8 A. I don't remember.
9 Q. Finally, do you recall discussing
10 the AHERF press release with any of Coopers & 03:52PM
11 Lybrand's auditors who worked on the AHERF
12 audit?
13 A. Definitely not.
14 Q. I have given you, Dr. Murasko,
15 Exhibit 1992. It has already been marked in 03:52PM
16 this case. They are -- well, the exhibit is
17 an agenda and partial minutes to a meeting of
18 the 8/27/1998 AHERF Board.
19 I will represent to you that a
20 thorough search has not been able to locate 03:53PM
21 official copies of the minutes, and this is
22 all we were able to find.
23 On the first page, there is a column
24 for Members Present, and you are listed as
25 attending. 03:53PM

Page 196

1 Dr. Donna M. Murasko
2 Do you see that?
3 A. Yes.
4 Q. Do you recall sitting here today
5 attending this meeting? 03:53PM
6 MR. KOLANKSY: When was the
7 bankruptcy?
8 MR. UNICE: The bankruptcy was
9 filed July 21, 1998.
10 A. I don't remember if I attended this 03:53PM
11 or not. I don't know.
12 Q. Upon reviewing the members present,
13 any reason to doubt that you attended?
14 A. No.
15 Q. Now, turn for me, if you will, to 03:53PM
16 the last page of this exhibit.
17 Are you there with me?
18 A. Yes, I am.
19 Q. And there is some handwriting on
20 this page. 03:54PM
21 A. Yes.
22 Q. After looking at many examples of
23 yours, I assume you are going to tell me this
24 is not your handwriting?
25 A. This is not my handwriting. 03:54PM

Page 197

1 Dr. Donna M. Murasko
2 Q. Now, I am going to point your
3 attention to the middle of this page. And I
4 am going to read some of the text. If I
5 misread it, let me know. 03:54PM
6 It says, "Also discussed auditors, C
7 & L has been for long time. Merged with P &
8 W. Think will have serious conflicts with C &
9 L. Recommend," or, "rec changing. KPMG or
10 Deloitte both good firms. Decided on KPMG 03:54PM
11 for," I believe that's, "W," for West, "and
12 Deloitte to do procedures for E," or East, "if
13 court approves."
14 MR. FRIESEN: Well, you missed
15 one line, which is an at sign, "to 03:54PM
16 retain."
17 MR. UNICE: Thank you. Thank
18 you. That's right below the merge with
19 PriceWaterhouse. Thank you.
20 BY MR. UNICE: 03:54PM
21 Q. Does this refresh your memory at all
22 as to any discussions at an AHERF Board
23 meeting regarding the decision to not retain
24 Coopers & Lybrand, or PriceWaterhouse Coopers?
25 A. I don't remember this discussion. 03:55PM

50 (Pages 194 to 197)

Page 234

1		
2	INDEX	
3	WITNESS	PAGE
4	DR. DONNA MARIE MURASKO	
5	By Mr. Friesen	4, 223, 232
6	By Mr. Unice	171, 231
7	- - -	
8	EXHIBITS	
9	NO. DESCRIPTION	PAGE
10	2515 Packet of Special Meeting of	
11	the Board of Trustees of AHERF,	
12	9/16/96	59
13	2516 Book II, Annual Meeting of the	
14	Board of Trustees of AHERF,	
15	12/12/96	75
16	2517 Handwritten notes	92
17	2518 AHERF Budgeted Consolidated	
18	Financial Statements, FY 1998	101
19		
20	2519 AHERF Consolidated Financial	
21	Statements, 9/30/97	112
22	2520 Memo from Mr. Morrison, to	
23	Members of the Resource	
24	Management Committee of AUHS,	
25	10/15/97	124
	2521 AUHS Financial Statements,	
	12/31/97	126
	2522 Packet of Meeting of the Board	
	of Trustees of AHERF, 3/12/98	130
	2523 Handwritten notes	142

Page 235

1		
2	INDEX (Continued.)	
3	EXHIBITS	
4	NO. DESCRIPTION	PAGE
5	2524 Fax from Ms. Anirim, to Dr.	
6	Murasko, 4/20/98	147
7	2525 Handwritten notes	147
8	2526 Packet of Meeting of the	
9	Board of Trustees of AHERF,	
10	10/30/97	156
11	2527 Packet of Meeting of the	
12	Resource Management Committee	
13	of AHERF, 10/16/97	158
14	2528 1995 Trustees' Evaluation	169
15	- - -	
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Page 236

I have read the foregoing transcript of my examination given on Thursday, April 8, 2004, and it is true, correct and complete, to the best of my knowledge, recollection, and belief, except for the corrections noted hereon and/or list of corrections, if any, attached on a separate sheet herewith.

DR. DONNA MARIE MURASKO

Subscribed and sworn to before me this ____ day of _____, ____

Notary Public

Page 237

I HEREBY CERTIFY that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on Thursday, April 8, 2004, and that this is a correct transcript of same.

Debra Ann Whitehead

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

O'Brien Dep.

In The Matter Of:

***AHERF v.
PRICEWATERHOUSECOOPERS***

THOMAS O'BRIEN
October 16, 2003

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O'BRIEN, THOMAS



LEGALINK

A WORDWAVE COMPANY

Page 86

- 1 A. Yes. I'd say that's a legitimate statement.
 2 Q. Okay. And it was your practice, and you don't
 3 have any reason to believe you varied from it,
 4 to review the audited financial statements when
 5 you received them?
 6 A. That's correct.
 7 Q. And I understand that Exhibit 1653, for reasons
 8 stated in the package, was a draft set of the
 9 audited 1997 financial statements, but you
 10 don't have any reason today to doubt that you
 11 would have reviewed that draft when it was
 12 forwarded to you?
 13 A. If it was forwarded to me, I'm sure I did.
 14 Q. And when you received those financial
 15 statements and, in both instances, ultimately
 16 the clean opinions the audit report contained
 17 within them, what did you understand that to
 18 mean?
 19 A. It means, as any clean opinion does, that, to
 20 the best of their ability, the auditors have
 21 reviewed the financial data for the period so
 22 stated, reviewed the internal controls and the
 23 integrity of them, and that, in their opinion,
 24 those statements fairly present the financial
 25 condition and the financial results of whatever

Page 87

- 1 period they chose to report on.
 2 Q. Did you at the time you received those clean
 3 opinions believe them to be important to the
 4 enterprise?
 5 A. Well, it was one of the most important things.
 6 I mean, when you're on a board like that, you
 7 look at a third-party provider of financial
 8 information, in this case audited information,
 9 and that gives you great comfort that a third
 10 party has reviewed the financial data and
 11 opined that it fairly presents the condition
 12 and represents the operations of the stated
 13 period.
 14 Q. Did you consider the third-party aspect of this
 15 review a check on internal financial
 16 management?
 17 MR. FRIESEN: Objection.
 18 A. Well, as in any full audit, they clearly review
 19 certain of the internal controls. There's no
 20 question about that.
 21 Q. And in your everyday job, you knew -- or as a
 22 consequence of your experience in your everyday
 23 job, you knew that audited financial statements
 24 were reviewed by people outside the
 25 organization itself as well, is that fair to

Page 88

- 1 say?
 2 A. I'm not sure I follow what you mean.
 3 Q. That -- I think what I mean to say is that when
 4 you were a member of the AHERF board, you
 5 understood that the audited financial
 6 statements that you received and reviewed were
 7 also made available to parties outside of
 8 AHERF, for instance, creditors?
 9 A. Oh, certainly. Yes.
 10 Q. And that they reviewed and relied upon those
 11 statements as well?
 12 A. And bond agencies and, you know, investment
 13 bankers and so forth and so on.
 14 Q. And those various parties you knew to receive
 15 and review those financial statements and rely
 16 upon them at the time they received them?
 17 A. Certainly.
 18 Q. So that the audited financial statements were
 19 important internally for management purposes
 20 and externally to others, at least as you
 21 understood it at the time?
 22 A. That's correct.
 23 Q. Did you use the audited financial statements
 24 that you reviewed for fiscal year 1996 and
 25 fiscal year 1997 -- and for the latter, either

Page 89

- 1 in draft or final form -- to help you gauge the
 2 performance of the enterprise?
 3 A. Yes. I'd say that's a legitimate question,
 4 particularly the fiscal year 1997, seeing that
 5 they were cash flowing at a meaningful rate
 6 during that previous 12 months.
 7 Q. Let me ask you to flip quickly back to the 1996
 8 audited financial statements, and page 3 at the
 9 bottom of those which you'll find at Exhibit
 10 1661.
 11 MR. SHAPIRA: What's the page number?
 12 MR. JONES: I'm sorry.
 13 THE WITNESS: 1661.
 14 MR. JONES: It's Exhibit 1661, page 3
 15 at the bottom of the page.
 16 BY MR. JONES:
 17 Q. That page presents the Consolidated Statement
 18 of Operations, is that right?
 19 A. I have 1661 here which is also page 55.
 20 Q. No. I'm sorry. It was Exhibit 1661.
 21 MR. SHAPIRA: You want him to look at
 22 page 2, right?
 23 MR. JONES: Page 3, the Statement of
 24 Operations.
 25 MR. SHAPIRA: Right at the beginning.

Page 90

1 THE WITNESS: Right at the beginning.
2 MR. SHAPIRA: Right.
3 BY MR. JONES:
4 Q. And I think in response to questions by
5 Mr. Friesen, you indicated that you did look at
6 net income as a part of your review of the
7 financial statements, am I right?
8 A. Um-hum.
9 Q. Is that a yes?
10 A. Let me -- I was reading. I didn't hear you.
11 Q. I'm sorry. I think in response to questions
12 from Mr. Friesen, you said you paid particular
13 attention to the statement of operations and
14 the net income line, is that correct?
15 A. Yeah. One of the things, yeah.
16 Q. And here we see the net income line has a
17 figure of what? Before extraordinary item and
18 change in accounting principle, the figure is
19 six-and-a-half million dollars, roughly?
20 A. That's correct.
21 Q. And so in 1996, the audited financial
22 statements reflected net income before
23 extraordinary item and change in accounting
24 principle of \$6.5 million, and I think that the
25 figure in 1997 you and Mr. Friesen discussed

Page 91

1 was a little over \$20 million, is that fair to
2 say?
3 A. That's correct.
4 Q. So the trend is up at least at year end --
5 fiscal year end 1997?
6 MR. FRIESEN: Objection.
7 A. That's correct.
8 Q. When seeing these financial statements and
9 seeing the trend we just discussed, you used
10 the information in the statements to help you
11 gauge the financial performance of the
12 enterprise and the financial ability of
13 management to run the enterprise too, is that
14 fair to say?
15 A. That's correct. Yes. Um-hum.
16 Q. You also, I think, testified that you recalled
17 receiving at least quarterly internal financial
18 statements, is that right?
19 A. To the best of my recollection, we got those.
20 There were interim statements. Quarterly, I
21 presumed, but there were interim statements,
22 most of which, as I say, I received and then
23 also got updates at the AUMC meetings.
24 Q. And do you recall ever receiving a quarterly
25 internal financial statement -- strike that.

Page 92

1 Do you recall ever receiving an
2 audited financial statement that caused you to
3 question the accuracy of an internal financial
4 statement?
5 A. I don't believe so.
6 Q. Did you use the audited financial statements as
7 a part of the tools available to you to monitor
8 performance of particular initiatives at AHERF,
9 for instance, the acquisition strategies that
10 we discussed earlier today?
11 A. Well, I would say this: I would say that we
12 weren't divorced from the realities that
13 certain things were losing money and that there
14 were negative trends in certain things, but
15 when you looked at the audited financials and
16 saw that they were still cash flowing in a
17 meaningful way, that gave you comfort that
18 while things weren't wonderful, they were
19 clearly still operationally solid.
20 THE VIDEOGRAPHER: Excuse me. I have
21 to change tapes. We are now going off the
22 record. The time is 12:38 p.m.
23 - - - -
24 (There was a recess in the proceedings.)
25 - - - -

Page 93

1 THE VIDEOGRAPHER: We are now going
2 back on the record. The time is 12:39 p.m.
3 BY MR. JONES:
4 Q. We're back on the record after a brief break,
5 Mr. O'Brien.
6 When you were a member of the AHERF
7 board, did you expect Coopers & Lybrand to
8 raise, either with the audit committee or with
9 the board itself, any material misstatements in
10 the financial statements presented for their
11 audit that they became aware of?
12 MR. FRIESEN: Objection.
13 A. Well, I would say, again, generically, in any
14 board, I would expect the auditor to raise
15 those kinds of issues probably through the
16 audit committee, and then up to the full board.
17 Q. Would you also expect Coopers & Lybrand during
18 this time period to have raised with the audit
19 committee or ultimately the full board any
20 intentionally misstatements they found in the
21 statements presented for their audit?
22 MR. FRIESEN: Objection.
23 A. Without question.
24 Q. Would you also expect Coopers & Lybrand, and
25 did you while you were a member of the board,

<p style="text-align: right;">Page 94</p> <p>1 to raise with the audit committee or the full 2 board any concerns that Coopers & Lybrand had 3 with the integrity or competence of financial 4 management? 5 MR. FRIESEN: Objection. 6 A. Absolutely. 7 Q. Why is that so important? 8 A. Well, I think it's, again, just prima facie. 9 You know, it's obvious that's what the board 10 hires outside auditors to do is, you know, 11 fundamentally report on the integrity of the 12 financial data which includes the integrity of 13 the management that's preparing them. 14 Q. Did you -- strike that. 15 Before the bankruptcy was 16 announced -- and I think we talked a little bit 17 about the fact that you learned about it 18 through means you don't recall, but it must 19 have been at or about the time of the 20 bankruptcy. When you learned of it, and at any 21 time before it, did you have any reason to 22 question the accuracy of the audited financial 23 statements presented to you? 24 A. No. Really, no. None. 25 Q. If Coopers & Lybrand had told you that the</p>	<p style="text-align: right;">Page 96</p> <p>1 indeed materially misstated and an adverse 2 opinion is to be issued? 3 MR. FRIESEN: Objection. Vague. 4 A. Well, I mean, speaking again on a generic 5 basis, you would clearly -- the audit committee 6 would clearly probably establish or the board 7 would establish a special committee to review 8 those allegations and determine whether they 9 are correct or not and would get to the bottom 10 of whether or not they are, in fact, correct. 11 Q. So you have the option of making inquiry? 12 A. Certainly. 13 Q. And indeed you also have the option of 14 recharging the auditors to expand their 15 procedures and scope, perhaps? 16 MR. FRIESEN: Objection. 17 A. I mean, all of that would come from this 18 special committee or whatever you would set up 19 to look into those allegations by the auditor. 20 Q. Is engagement of additional consultants a part 21 of the options that committee would have? 22 MR. FRIESEN: Objection. 23 A. There would be all kinds of different options, 24 but that -- it would be a full inquiry into the 25 allegations. That's all I would say.</p>
<p style="text-align: right;">Page 95</p> <p>1 fiscal year 1996 or 1997 financial statements 2 presented for their audit were indeed 3 materially misstated and that they were, 4 therefore, going to issue an adverse opinion on 5 those statements, would that have caused you 6 concern? 7 MR. FRIESEN: Objection. 8 A. Well, clearly. 9 Q. And for the jury, why is that such a concerning 10 thing? 11 MR. FRIESEN: Objection. 12 A. Well, you're obviously looking as, again, a 13 member of the board or any other constituency 14 where these things are used. You're looking to 15 make sure that they are high integrity, and you 16 base judgments on performance and risk, all 17 those things. 18 Q. What kind of options does a board member and a 19 board have when faced with these kinds of 20 circumstances? 21 MR. FRIESEN: Objection. 22 A. With what kinds of circumstances? 23 Q. When an auditor comes to the board or the audit 24 committee and tells them that the financial 25 statements presented for their audit were</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. If Coopers & Lybrand had told you that the 2 fiscal year 1996 or 1997 financial statements 3 presented for their audit were intentionally 4 misstated, what reaction would you have had? 5 MR. FRIESEN: Objection. Calls 6 for -- sorry. 7 A. I would have been quite alarmed. Yeah. 8 MR. FRIESEN: Calls for speculation. 9 A. Yes. 10 Q. You may answer. 11 A. I can answer? 12 MR. SHAPIRA: Yeah, you can go ahead. 13 A. Yeah. I'd be quite alarmed, obviously. 14 Q. And would you have the same kinds of options we 15 just discussed? 16 A. I would demand them. 17 Q. And if the result of the inquiry or the options 18 that we discussed led you to question or 19 brought into question the integrity of 20 financial management or its competence, what 21 other options did you have at that point? 22 MR. FRIESEN: Objection. 23 A. Well, you clearly replace them. 24 Q. If Coopers & Lybrand had told you that the net 25 income on the fiscal year -- that net income on</p>

Page 98

1 the fiscal year 1996 statement of operations
2 presented for audit had been overstated
3 contrary to Generally Accepted Accounting
4 Principles by approximately \$80 million, what
5 reaction would you have had?
6 MR. FRIESEN: Objection.
7 A. My reaction would have been, again, quite
8 alarmed.
9 Q. And you would have had the same options and the
10 same recourse?
11 MR. FRIESEN: Objection.
12 A. Yeah, and, again, those were all functions and
13 roles of the audit committee that would
14 immediately deal with those issues and report
15 to the board.
16 Q. Your answer wouldn't change if I changed the
17 circumstance to fiscal year 1997 and a similar
18 report from the auditors about the
19 overstatement of net income, is that fair to
20 say?
21 A. Um-hum.
22 MR. FRIESEN: Objection.
23 A. Certainly.
24 Q. A part of your options at that point, either in
25 1996 or in 1997, would have been to order that

Page 99

1 the financial statements be restated, is that
2 accurate?
3 MR. FRIESEN: Objection.
4 A. Had we been made aware by an independent
5 auditor that there was a meaningful
6 misstatement, obviously, it would have been my
7 reaction that we would have to go back in, do
8 the proper accounting, and restate the results.
9 Q. If Coopers & Lybrand had told you that --
10 during the time you were on the board had told
11 you that they had concerns about the integrity
12 or competence of financial management,
13 including Mr. McConnell or Mr. Abdelhak, what
14 reaction would you have had?
15 MR. FRIESEN: Objection.
16 A. I would have wanted to get to the bottom of it
17 quickly, and probably if it was corroborated
18 and nothing was done, I would have resigned.
19 Q. And the option about doing something would be
20 to --
21 A. To eliminate them.
22 Q. That is Mr. Abdelhak and Mr. McConnell?
23 A. Yeah.
24 Q. If you would have been informed by Coopers &
25 Lybrand that the fiscal 1996 or 1997 financial

Page 100

1 statements were the product of fraud or
2 suspected fraud on the part of internal
3 financial management, what would your reaction
4 have been?
5 MR. FRIESEN: Objection.
6 A. The same as my other answers.
7 Q. It would have been a concerning event,
8 obviously?
9 A. Yes.
10 Q. Would audit revelations like these that we have
11 just discussed have affected your view about
12 the financial success of the strategy in place
13 at AHERF at the time?
14 MR. FRIESEN: Objection. I don't
15 know what --
16 A. I'm not sure.
17 MR. FRIESEN: -- revelations you're
18 talking about.
19 A. Yeah. You better be a little more specific.
20 Q. Well, let me start with -- yeah. Let me try
21 that.
22 If the revelations we just discussed
23 about material misstatements and suspected
24 integrity or competence problems among
25 financial management, if those revelations had

Page 101

1 been made to you or any of them, would that
2 have given you some concern about the validity
3 of any financial success that management was
4 claiming in operations?
5 MR. FRIESEN: Objection.
6 A. Yeah, in all likelihood. It depended where the
7 misstatements was occurring or the fraud was
8 occurring, but, by and large, it clearly would
9 have been an overstatement, if that was one of
10 the hypothetical situations you said, so that
11 the enterprise was not performing at the levels
12 that we had assumed it was.
13 Q. You mentioned that you thought you had heard
14 something about ex-officio appointments to
15 committees like the audit committee based on
16 chairpersonships at subsidiary boards. Do you
17 recall that testimony?
18 A. I do recall that that's what I said. I
19 hypothesized that, yes.
20 Q. Yeah, and I guess my question is do you really,
21 now as you sit here today, recall whether --
22 from whom you heard that and whether indeed it
23 was a fact that there was such an ex-officio
24 membership program?
25 MR. FRIESEN: Objection. Asked and

Page 102

1 answered.
 2 A. Yeah, I really -- somewhere there was a
 3 document that indicated that. Yeah. I think
 4 it probably got back to that restructuring and
 5 fourth quarter -- fourth calendar quarter of
 6 '97.
 7 Q. You were asked a question about, I think, what
 8 you believed to be either the reason or part of
 9 the reason for AHERF's bankruptcy at the time
 10 you heard of it, what you believed at the time.
 11 Do you recall that testimony?
 12 A. Somewhat.
 13 Q. Very briefly. My question to you is, at the
 14 time, you didn't do an in-depth analysis about
 15 reasons for AHERF's bankruptcy, is that fair to
 16 say?
 17 A. That's correct. That was -- I don't even know.
 18 I think that was after I had resigned from the
 19 board.
 20 MR. JONES: I believe that's all I
 21 have.
 22 MR. FRIESEN: Let me just ask a
 23 couple of follow-up questions.
 24 THE WITNESS: Sure.
 25 - - - -

Page 103

EXAMINATION

- - - -

BY MR. FRIESEN:

1
 2
 3
 4 Q. Mr. Jones gave you a number of hypotheticals
 5 about Coopers & Lybrand hypothetically telling
 6 you various things. Is it fair to say that you
 7 don't know, sitting here today, apart from
 8 setting up a special committee which is what
 9 you've testified to, precisely what you would
 10 do as a board member if any of those
 11 hypotheticals had actually happened?
 12 MR. JONES: Object to form.
 13 A. What I precisely would do?
 14 Q. Right.
 15 A. I know precisely what I would do, yes. I would
 16 demand to have a special committee look into
 17 the allegations. That special committee would
 18 probably have been from the board, not just
 19 from the audit committee, because of the
 20 seriousness of the allegations.
 21 Q. Okay. If you will turn back to Exhibit 1661.
 22 A. Is it this one?
 23 Q. Yeah. That's the '96 fiscal year audited
 24 financials, and if you go to page JB 01608
 25 which is the Consolidated Statement of

Page 104

1 Operations that I think Mr. Jones pointed out
 2 to you.
 3 A. Yes.
 4 Q. And you see that investment income is
 5 \$74,075,000?
 6 A. Right.
 7 Q. And then net income after -- sorry. Net income
 8 before extraordinary item and change in
 9 accounting principle is \$6,547,000?
 10 A. That's correct.
 11 Q. Do you recall being aware at the time that you
 12 received this that but for the investment
 13 income, the net income would be tens of
 14 millions of dollars less?
 15 MR. JONES: Object to form.
 16 A. Well, I mean, on the face of it, but as I said
 17 in the earlier one, if you look at the
 18 depreciation and amortization at over
 19 \$95 million, those are non-cash charges, so
 20 that you end up with a cash flow of over
 21 \$100 million before the extraordinary items,
 22 and, therefore, investment income was a way --
 23 and investment income was a significant factor
 24 for the hospital in any event.
 25 Q. Just for the jury, what do you mean by non-cash

Page 105

1 charges?
 2 A. Charges that are against revenue but do not
 3 really take any cash. So when you look at an
 4 enterprise's ability to generate cash from
 5 their operation, you add back into your net
 6 income non-cash charges such as depreciation.
 7 MR. FRIESEN: Okay. I don't have any
 8 further questions.
 9 MR. JONES: And I don't either.
 10 THE WITNESS: Bravo.
 11 THE VIDEOGRAPHER: If there are no
 12 further questions, this deposition is
 13 concluded. We are now going off the record.
 14 The time is 12:54 p.m.
 15 - - - -
 16 (The proceedings were concluded at 12:54 p.m.)
 17 - - - -
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Page 106

1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE

2 COUNTY OF ALLEGHENY) SS:

3 I, JoAnn M. Brown, RMR, CRR, a Court Reporter
 4 and Notary Public in and for the Commonwealth of
 5 Pennsylvania, do hereby certify that the witness,
 6 THOMAS H. O'BRIEN, was by me first duly sworn to
 7 testify to the truth; that the foregoing deposition
 8 was taken at the time and place stated herein; and
 9 that the said deposition was recorded
 10 stenographically by me and then reduced to printing
 11 under my direction, and constitutes a true record of
 12 the testimony given by said witness.

13 I further certify that the inspection, reading
 14 and signing of said deposition were NOT waived by
 15 counsel for the respective parties and by the
 16 witness.

17 I further certify that I am not a relative or
 18 employee of any of the parties, or a relative or
 19 employee of either counsel, and that I am in no way
 20 interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
 22 and affixed my seal of office this 21st day of
 23 October, 2003.

24

25

Notary Public

Page 107

1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
 2 COUNTY OF ALLEGHENY) S H E E T

3

4 I, THOMAS H. O'BRIEN, have read the foregoing
 5 pages of my deposition given on Thursday, October 16,
 6 2003, and wish to make the following, if any,
 7 amendments, additions, deletions or corrections:
 8 Page/Line Should Read Reason for Change
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In all other respects, the transcript is true and
 correct.

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THOMAS H. O'BRIEN

Subscribed and sworn to before me this
 day of , 2003.

23

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29

30

31

32

33

Notary Public

AKF Reference No. JB77734

28 (Pages 106 to 107)

Palmer Dep.

In The Matter Of:

***AHERF v.
PRICEWATERHOUSECOOPERS, L.L.P.***

***ROBERT PALMER
August 8, 2003***

***LEGALINK MANHATTAN
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PALMER, ROBERT



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ROBERT PALMER

Page 110	Page 112
<p>1 Sherif Abdelhak on the day that I 2 called, whatever day that was, was not -- was 3 traveling or something, was not available, but 4 Mr. Snyder said he would get word of my concern 5 to Mr. Abdelhak and that he would call me as 6 soon as he could, and, in fact, Mr. Abdelhak 7 called me the next morning.</p> <p>8 Q. And what was your concern that you wanted to 9 express to Mr. Abdelhak and which you did 10 express to Mr. Snyder?</p> <p>11 A. It was concern that this transaction had been 12 completed without a thorough review with all of 13 the trustees, as opposed to a limited number of 14 trustees, particularly trustees with a history 15 in the Philadelphia, the Eastern Pennsylvania 16 market, and I was concerned about whether it 17 fit with the strategy that I believe we were 18 following, and I was concerned that the 19 operational results of this transaction might 20 well not be favorable for our challenged 21 operating position, financial operating 22 position.</p> <p>23 Q. And your concern was for AHERF as the whole; 24 correct?</p> <p>25 A. Yes.</p>	<p>1 once the announcement -- and the university, 2 Graduate system was known, well known to be a 3 troubled system in terms of financial 4 difficulties.</p> <p>5 Once it would break in the newspaper 6 and the people would read it as not SDN, they 7 would read it as Allegheny buys Graduate, it 8 would possibly not allow the further steps of 9 the analysis, the diligence, et cetera, to 10 really have the effectiveness that it ought to 11 have because the public would have assumed that 12 that was a done deal; and if in the diligence 13 process over the coming weeks and months it was 14 judged by management and board of Allegheny 15 that this wouldn't be the right transaction, 16 the ability to undo it in the mind of the 17 public, et cetera, would be very, very 18 difficult.</p> <p>19 Q. And did your concerns come to fruition in that 20 after the announcement was made in the 21 newspaper, the AHERF management and board were 22 not able to take all the steps of diligence 23 which you would expect with regard to the 24 Graduate institutions prior to making a 25 decision about whether the Graduate institution</p>
Page 111	Page 113
<p>1 Q. Even though this transaction was conducted 2 by --</p> <p>3 A. As well as by eastern parts and the whole.</p> <p>4 Q. Okay. Now, you told me previously that this 5 transaction was done through SDN, which I 6 believe you said it was a company owned by 7 three AHERF executives; correct?</p> <p>8 A. Yes, mm-hmm.</p> <p>9 Q. Why were you concerned about its effect on 10 AHERF if this was done by a separate 11 corporation?</p> <p>12 A. Because I believed I have -- I'm not an 13 investment banker, but, in fact, I have a fair 14 amount of familiarity with investment banking, 15 merger and acquisition work.</p> <p>16 It's -- it is not uncommon for a 17 transaction to be done through a special 18 purpose company, but I thought it was quite 19 uncommon and not that wise to allow the 20 announcement -- and particularly in a community 21 service organization, which a hospital, a 22 medical school, nursing school and all of 23 these, I mean healthcare is really active 24 within the community, particularly when you 25 have a school of public health at any rate,</p>	<p>1 should become part of AHERF?</p> <p>2 MR. JONES: Object to form and 3 foundation.</p> <p>4 A. The form's very difficult. I'm going to break 5 up a couple of the pieces.</p> <p>6 Was there a diligence exercise done? 7 Yes. Was it a thorough exercise? I believe it 8 was. But did at least this trustee feel that 9 he had the ability to reach a decision without 10 bearing the weight on his shoulders of 11 tremendously disappointing the Philadelphia 12 marketplace from people looking for healthcare, 13 people looking for education, people looking 14 for jobs who had jobs in the Graduate Health 15 System, et cetera, the expectations that had 16 been built up, I felt that my mind didn't have 17 the total freedom that it should have had to 18 weigh all the factors and the diligence. Yes, 19 the diligence was done.</p> <p>20 Q. Do you recall if any trustee ever voiced to you 21 that following the diligence but prior to 22 making the decision as to whether to include 23 Graduate as part of AHERF, that they too felt 24 as though that their decision was hampered by 25 the manner in which management had initially</p>

ROBERT PALMER

<p style="text-align: right;">Page 114</p> <p>1 announced the deal between SDN and The Graduate 2 Hospitals? 3 MR. JONES: Object to form. 4 A. Yes. 5 Q. Do you recall which trustees raised those 6 concerns with you? 7 THE WITNESS: Is there a need for me 8 to mention names? 9 MR. McCLENAHAN: Yeah, I think that 10 he's titled to that information. 11 A. Dorothy Brown. 12 MR. JONES: We couldn't hear you, I'm 13 sorry. 14 A. Dorothy Brown would have been one that comes to 15 mind. I have a feeling there might have been 16 one or two others, but I don't have a clear 17 recollection of that. Dorothy Brown would have 18 been one who shared my concerns. 19 Q. Did you ever raise your concerns on this issue 20 with the full board? 21 A. Yes. 22 Q. And this would have been at a board meeting? 23 A. I believe so. 24 Q. Do you recall if Ms. Brown ever voiced her 25 concerns about how?</p>	<p style="text-align: right;">Page 116</p> <p>1 board -- and maybe my letter would have been 2 more articulate if when I said why did 3 management not use the board, I might have said 4 the full board. There were board members. I 5 mean I learned in my dialogue with Mr. Snyder, 6 with Mr. Abdelhak, and talking as the days went 7 by with some of the board members, yes, there 8 were -- there were some board members who were 9 consulted with as that transaction was 10 developing. 11 Q. Do you recall if any trustee ever voiced the 12 opinion that they felt that the bringing of The 13 Graduate Hospitals into AHERF from SDN was 14 almost a fait accompli because of how the whole 15 transaction was handled in the first place? 16 MR. JONES: Object to form and 17 foundation. 18 A. I think I've already said I was the trustee 19 who -- who felt that I didn't have the total 20 freedom of judgment that I would have liked to 21 have had because it was a published, and the 22 way the public would read that announcement, 23 what they would think that announcement said. 24 Q. And I believe you mentioned Ms. Brown also had 25 similar sentiments?</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Yes. 2 Q. If I can turn you back to Exhibit 2099, I think 3 you referred to earlier that you had made 4 three -- 5 A. I'm sorry? 6 Q. Your letter, the August 19th letter. -- that 7 you had made three points concerning your 8 concerns, and I believe the letter indicates 9 that you were not going to be able to attend a 10 meeting that Mr. Abdelhak was going to conduct 11 with the trustees, so you wanted these points 12 addressed? 13 A. Yes. 14 Q. And the first point I believe says, Why did 15 management not use the board for any advance 16 consultation when the transaction was of such 17 great strategic, financial, and operational 18 magnitude. 19 Did you ever receive an answer from 20 Mr. Abdelhak to that question? 21 A. Yes, I did receive an answer. The answer was 22 that selected board members, particularly some 23 of the most active board members and executive 24 committee board members, were consulted, but 25 there was the acknowledgement that the full</p>	<p style="text-align: right;">Page 117</p> <p>1 A. (Nodding head up and down.) 2 Q. Do you recall when you raised this issue at the 3 board meeting whether other members of the 4 board of trustees also voiced concern that the 5 substantial transaction had basically been 6 consummated without any consultation to the 7 members of the board of trustees other than the 8 ones that you mentioned -- 9 MR. McCLENAHAN: Objection. 10 Q. -- you referred to Mr. Abdelhak -- 11 MR. McCLENAHAN: Objection. 12 Q. -- citing to you? 13 MR. JONES: Object to form, 14 misrepresents facts. 15 MR. McCLENAHAN: I don't think you 16 are accurately summarizing his testimony, but 17 you can answer the question if you are able. 18 A. Well, I'll just call your attention to one 19 piece. 20 Q. Sure. 21 A. There was one meeting on Thursday, August 22nd, 22 that I could not attend. Many trustees did 23 attend. It was held in Philadelphia to make 24 sure that Philadelphia trustees had an 25 opportunity. I can't tell you -- I wasn't</p>

ROBERT PALMER

Page 226

1 Wendy.

2 MR. LUFT: Okay. Being mindful of
3 your time, Mr. Palmer, I truly appreciate the
4 time you offered today, and I have no further
5 questions at this time.

6 MR. JONES: I will have a few
7 questions. We have been at it almost precisely
8 another hour since our last break. I would
9 propose that we break briefly, and if everyone
10 agrees that you'd like me to go forward this
11 afternoon, I'll do my best to complete.

12 MR. McCLENAHAN: We don't need to
13 consult on whether we want you to go forward.

14 MR. JONES: All right.

15 MR. McCLENAHAN: We want you to
16 complete.

17 THE VIDEOGRAPHER: We are now going
18 off the record. The time is 3:36 p.m.

19 ----

20 (There was a recess in the proceedings.)

21 ----

22 THE VIDEOGRAPHER: We are now going
23 back on the record. The time is 3:43 p.m.

Page 227

1 ----
2 EXAMINATION
3 ----

4 BY MR. JONES:

5 Q. Mr. Palmer, we have met, as we have
6 established. My name is Jim Jones. I am
7 indeed here on behalf of the Creditors
8 Committee. I will have a relative few
9 questions for you I believe.

10 I would ask if, as it is getting late
11 in the day, if there's a time that I've spoken
12 too rapidly or you don't otherwise understand
13 me, you tell me, I'll do my best to rephrase it
14 so that we can understand one another. Can we
15 have that agreement?

16 A. Sure.

17 Q. I'm also sitting quite a distance from you in
18 the room, and if you could try to hold your
19 voice up, that will help me.

20 A. Sorry.

21 Q. Thank you. Mr. Palmer, from time to time you
22 were shown board packages of some considerable
23 length, some we measured at more than 200 pages
24 today; is that right?

25 A. Yes.

Page 228

1 Q. And it's fair to say for those of us and for
2 others who may read this transcript rather than
3 view a videotape of these proceedings that you
4 did not attempt today to read every page of
5 those larger packages that were marked as
6 exhibits; am I right?

7 A. Correct.

8 Q. And is it also fair to say that had you had the
9 opportunity to read those packages, it could be
10 that the context that exercise provided might
11 alter your responses?

12 A. Possible.

13 Q. You just don't know because you didn't have
14 that opportunity; is that right?

15 A. Seems possible.

16 Q. You were also asked some questions, not just
17 about the board packages or board books
18 distributed in advance of board meetings, but
19 about the minutes of those meetings themselves.
20 Do you recall that examination briefly?

21 A. Very early in the morning, yes.

22 Q. Right. My question is: You were asked some
23 questions about whether the minutes accurately
24 reflected the content of the meetings, and my
25 question is really in your experience in both

Page 229

1 nonprofit boards and for-profit boards and, in
2 fact, other organizations that keep minutes,
3 the minutes aren't intended to capture
4 everything spoken in the meeting; is that
5 right?

6 A. That would be my belief.

7 Q. And what is it in your experience that the
8 minutes are intended to capture?

9 A. I can only give you a personal view. I don't
10 know what the right answer to your question is.
11 In my personal view, I believe the minutes are
12 to make very clear decisions that were made and
13 responsibilities that come out of those
14 decisions so they can be referred to and
15 ongoing questions that need education,
16 decision-making, et cetera.

17 Q. You mentioned in response to some questions
18 earlier in the day that you were interested in,
19 in particular, some cost and profitability data
20 that would track in the healthcare business
21 what you were making for various procedures
22 and/or various patient admissions and contacts
23 with your facilities.

24 Do you recall that testimony?

25 MR. LUFT: Objection.